IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1321 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRIMO A PEREIRA

Versus

STATE OF GUJARAT

Appearance:

MR MD VAKIL for Petitioner.

Mr. A.Y. Kogje, AGP for Respondents.

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE Y.B.BHATT

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The law's delay is a common anxiety of one and all concerned with the administration of justice and one

who wants to see the inordinate delay in disposal of civil dispute in the system of civil justice, one would would be tempted to peep into this petition's chequered history. However, looking to the scope of the petition on hand, we would not go into this aspect any further meticulously, but the common interest and anxiety of one and all concerned with the system of justice has been to see as to how to reduce, control and minimise avoidable delay in disposal of dispute in the present set-up of system. The genesis of the dispute which has led to this petition apparently would be a Notification under Section 4(1) of The Land Acquisition Act, 1894, published and notified as early as on 23.11.1955 and the resultant issue and dispute of claim of compensation of a tenant of the land acquired under the said Notification is still pending, and despite the specific observations made by Hon'ble Supreme Court of India in Appeal No. 2684 of 1977 on 27.7.1988 and subsequently modified in M.C.A. No. 3171 of 1988 recorded on 5.5.1989, and resultant supplementary award under Section 11 of the Act. The respondent No.2, the Additional Special Land Acquisition Officer, by his order dated 18.12.1999, which is challenged and which is in focus in this petition, unfortunately, stalled the onward journey of litigation if not derailed, whereby, he filed the application of the petitioner seeking reference under Section 18, on a ground which is neither legal nor reasonable nor germane to the issue of compensation without any competence and jurisdiction by passing an order to file the application instead of allowing it to march to the Reference Court in absence of any issue of Limitation which is the entire linchpin of the controversy in this petition under Article 226 of the Constitution of India. Incidentally, petitioner also made an application under Section 30 for apportionment of the amount of compensation raising a dispute that he being a tenant of a superstructure in which the hotel known as "Ritz" was running is entitled to apportionment of the amount of compensation under different heads. Unfortunately, the manner and methodology, the reason and the ground on which respondent No.2 has passed the order in vernacular on 18.12.1999, copy, whereof, is annexed Annexure "A" in this petition is, indubitably, unreasonable, illogical, illegal and without any competence. The petitioner has also prayed for direction to the respondent No.2 to make a reference under Section 30 of the Act with regard to the apportionment of the amount of compensation already awarded by the Land Acquisition Officer (respondent No.2) by his award dated 3.8.1998.

2. After having given anxious thoughts and

considerations to the facts and circumstances emerging from the record of the present case, and considering the entire historical portrait of facts followed by order of the Hon'ble Supreme Court and the impugned award coupled with the statements raised before us, we are of the clear opinion that the petitioner is entitled to the relief for a reference under Section 18 insofar as the impugned order of the respondent No.2, dated 18.12.1999, and an application for apportionment of the amount of compensation under Section 30 and the respondent No.2 is obliged to make a reference in accordance with the provisions of law. Therefore, the respondent No.2 is directed to refer the Reference Application preferred under Section 18 of the Act to the Reference Court for judicial determination of the compensation awarded by respondent No.2 in his supplementary award declared on 3.8.1998 and also to make a reference under Section 30 of the Act for the apportionment of the amount of award and as indicated in supplementary award dated 3.8.1998, as expeditiously, as possible, but not later than 31st December 2001 in view of the unduly long time spent in this litigative journey, with costs, which is quantified at Rs. 5,000/- which shall be deposited before this Court on or before 31st December 2001. Consequently, the petition is allowed. Rule made absolute with costs as aforesaid. Direct service permitted.

3. Before parting with this Judgment, we would like to place on record a necessary Caveat with a view to see that the process and finalisation of the dispute is not further delayed and complicated. On perusal of the record, it appears, that the parties in appeal, before the Hon'ble Supreme Court, No. 3 to 7 who were also directed to file affidavit and who appeared to be the members of family of the original-lessee of the hotel are not parties before us in this petition, and in view of their claims under Section 9(3) of the Act before respondent No.2, the copy whereof is placed as Annexure "E" in this petition, it would be necessary and imperative for the Reference Court to consider this aspect when the question of apportionment of amount of compensation is to be considered in the light of the facts and circumstances that may be placed in course of the proceedings.

rmr.

[J.N. Bhatt, J.]

[Y.B. Bhatt, J.]